

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPEAL NO. 430 OF 2022
WITH
CRIMINAL APPLICATION NO. 1876 OF 2022

(1) NARAYAN LAHANAPPA PARATKAR
(2) DIGAMBAR SAHADEO VAIRAL
(3) VIJAY @ CHOTTU SHIVAJI VAIDYA
(4) GORAKHNATH @ AJAY PUNAMCHAND AADE

VERSUS

THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr Mangesh R. Jadhav
APP for Respondent/State : Mr G.O. Wattamwar

WITH
CRIMINAL APPEAL NO. 384 OF 2022
WITH
CRIMINAL APPLICATION NO. 1719 OF 2022

(1) BHIMASHANKAR S/O VISHNU KORDE
(2) VITTHAL S/O LAHANAPPA PAARATKAR
(3) BHIVRAJ S/O NARAYAN KAATE

VERSUS

THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr Chaitanya C. Deshpande
APP for Respondent/State : Mr G.O. Wattamwar

WITH
CRIMINAL APPEAL NO. 410 OF 2022
WITH
CRIMINAL APPLICATION NO. 1769 OF 2022

(1) VISHAL S/O DNYANOBA (GYANOBA) GAIKWAD
(2) VAIBHAV S/O DNYANOBA (GYANOBA) GAIKWAD

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Advocate for Applicants : Mr M.B. Sandanshiv
APP for Respondent/State : Mr G.O. Wattamwar

CORAM : SHRIKANT D. KULKARNI , J.

DATE : 29th JULY, 2022

PER COURT :

1. These are the appeals filed by the appellants/original accused Nos. 1 to 9 though by way different proceedings of appeal assailing the impugned judgment and order of conviction dated 12.05.2022 rendered in Sessions Case No. 231/2015 by the Additional Sessions Judge, Aurangabad. They have also prayed for suspension of sentence and bail.
2. Heard Mr Mangesh Jadhav, Mr Chaitanya Deshpande and Mr M.B. Sandanshiv, learned counsel appearing for the respective appellants and Mr G.O. Wattamwar, learned APP for the State.
3. So far as the admission of appeals are concerned, on hearing the learned counsel for the appellants and the learned APP for the State, various legal points were raised including dispute about cause of death. As such, all the appeals need to be admitted. Accordingly, all the appeals are admitted.
4. Issue notice to the respondent/State. Mr Wattamar, the learned APP waives service of notice for the State in all the appeals.
5. Call paper book from the concerned Court.
6. Record and proceedings if received by the Registry, it be sent back to the concerned Court for preparing the paper book.

7. Now, coming to part of suspension of sentence and bail. It is revealed during the course of argument that all the accused were on bail during the trial. They have been taken into custody soon after conviction at the hands of the Additional Sessions Judge, Aurangabad.

8. The learned counsel for the respective appellants have taken me through the relevant part of the evidence of autopsy doctor and the observations made by the learned Additional Sessions Judge coupled with opinion about the cause of death.

9. It is further pointed out by the learned counsel for the appellants that maximum sentence awarded against appellants/accused is five years for the offence punishable under section 304 (Part I) of I.P.C. read with section 149 of I.P.C.

10. At this stage, it is not expected to make in-detail scrutiny of the evidence produced before the trial court. It is to be seen whether the case is made out for suspension of sentence and bail during the pendency of appeal.

11. First point which is highlighted by the learned counsel for the appellants about cause of death and evidence of autopsy doctor which indirectly supports the defence. It is further revealed during the course of argument that wife and daughter of the first informant were the eye witnesses to the incident and they seem to have witnessed the incident of making assault at the hands of the appellants. The evidence of an eye witnesses though related and interested cannot be discarded unless there

is certain material. It cannot be discarded simply because they are related and interested witnesses. The issue is about cause of death and the medical evidence which is on record. It *prima faice* appears from the autopsy Dr Balaji Ganaba Phalke that he had noticed in all four external injuries in the nature of abrasion. He did not notice injury to scalp and brain. On internal examination, Dr Balaji Phalke found blood infiltration in mesentery and congested. In cavity, contained 1750 cc of blood. Superior mesenteric artery ruptured with irregular edges leading to bleeding. There was contusion of size of 4X2 cm seen over right lobe liver. Contusion of size 3X2 cm seen over hilum of spleen. According to Dr Balaji Phalke, injuries mentioned in postmortem report column No. 17 and 21 may be possible due to beating of fist and kick blows and in ordinary course of nature collectively, these injuries are sufficient to cause death. While facing the cross-examination, Dr Balaji Phalke in para No. 7, gave some admissions which are supporting to the defence. Dr Balaji Phalke admitted that death due to rupture of mesenteric artery may cause due to multiple reasons like injury, disease of artery. The consumption of excessive liquor can be a another cause. In para No. 9, Dr Balaji Phalke gave opinion that if any hard substance or fist or kick blows are given to stomach or abdomen region, it results into abrasion and contusion.

12. Having regard to the above resume of quality of medical evidence and the opinion about cause of death, there is possibility of death of the deceased due to excessive consumption of liquor. It is also pointed out that soon after the incident, the deceased was taken to the MGM Hospital. However, discharge was taken by the deceased and his

family members against the medical advice and taken him back to the home and in the early morning, he was succumbed to the injuries.

13. Having regard to the scenario referred above, it seems that view expressed regarding cause of death due to excessive consumption of liquor also there. Further, it is evidence that accused, who are in large number, had not pre-planned to make assault on the deceased, they were not armed with any weapons. On account of some issue, the alleged incident had taken place near from the house of deceased which indicates lack of *prima facie mens rea*.

14. Having regard to the above scenario and looking to the fact that the appellants/accused Nos. 1 to 9 were on bail during the trial. They need to be enlarged on bail by suspending the sentence. There are no extraordinary circumstances to keep them behind the bars during the trial. It is nowhere shown by the prosecution side that they have misused their liberty during trial. There is no question of tampering of any witnesses.

15. In view of above discussion, the applications moved by the respective appellants/accused need to be allowed as under :-.

ORDER

(A) All the applications made by the respective applicants/accused for suspension of sentence and bail are hereby allowed.

(B) The substantive sentence passed against the appellants/accused Nos. 1 to 9, namely, (1) Narayan

Lahanappa Paratkar (2) Digambar Sahadeo Vairal (3) Vijay @ Chottu Shivaji Vaidya (4) Gorakhnath @ Ajay Punamchand Aade (5) Bhimashankar S/o Vishnu Korde (6) Vitthal S/o Lahanappa Paaratkar (7) Bhivraj S/o Narayan Kaate (8) Vishal S/o Dnyanoba (Gyanoba) Gaikwad and, (9) Vaibhav S/o Dnyanoba (Gyanoba) Gaikwad is hereby suspended till final decision of the appeals.

- (C) The appellants/accused Nos. 1 to 9 shall be released on bail on their furnishing PR Bond of Rs.20,000/- (Rupees Twenty Thousand) each with one or two solvent sureties of the like amount by each of them on following conditions :
- (i) The appellants shall furnish their in-detail address with the trial court as well as the concerned Police station with their respective cell numbers.
- (ii) Bail before the trial court.
- (iii) All the criminal applications are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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